

7.8 Delegated Committees - Establishment, delegations and appointment of Chairpersons and members

Abstract

This report considers the establishment the Services Delegated Committee, Urban Planning Delegated Committee, and Management Performance Review Delegated Committee, the appointment of Chairpersons and members to these Committees and recommends the making of the Instrument of Delegation for each Committee.

The sections of the *Local Government Act 2020* (the Act) relating to delegated committees came into effect on 1 May 2020. The delegations to the existing committees made under the *Local Government Act 1989* remain in force until 1 September 2020 or until the committees are established by Instruments of Delegation made under the provisions of the Act.

Instruments of Delegation represent the formal delegation of powers by Council and enable the business of Council to be carried out efficiently and in line with Council approved policies.

The Instruments of Delegation to the existing Services, Urban Planning and Management Performance Review Special Committees were last adopted by Council on 27 February 2017.

Council subscribes to the Maddocks Lawyers Authorisations and Delegations Service, which provides advice regarding legislative amendments and the provision of template instruments which are then tailored to organisational requirements.

Officers are of the view that the Council has been well served by the existing committee structure and no changes to the structure are proposed. Based on advice from Maddocks Lawyers, the previous versions of the Instruments of Delegation from Council to the Committees have been updated to reflect the recent legislative changes as a result of the proclamation of the Act.

Officers' recommendation

In exercise of the powers conferred by s 63 of the *Local Government Act 2020* (the Act), Council resolves that:

1. From the date of this resolution, there be established as Delegated Committees the Services Delegated Committee, the Urban Planning Delegated Committee and the Management Performance Review Delegated Committee.
2. The purpose of the Delegated Committees are those set out in **Attachment 2** as annexed to the minutes.
3. The members of the Services Delegated Committee are Councillor Addis, Councillor Healey, Councillor Hollingsworth, Councillor Hurd, Councillor Parke, Councillor Thompson, Councillor Ross, Councillor Sinfield, Councillor Watson and Councillor Wegman.

4. The members of the Urban Planning Delegated Committee are Councillor Addis, Councillor Healey, Councillor Hollingsworth, Councillor Hurd, Councillor Parke, Councillor Thompson, Councillor Ross, Councillor Sinfield, Councillor Watson and Councillor Wegman.
5. The members of the Performance Management Review Committee are Councillor Addis, Councillor Sinfield, Councillor Watson and Councillor Wegman.
6. The Chairperson of the:
 - Services Delegated Committee is Councillor Ross;
 - Urban Planning Delegated Committee is Councillor Thompson.
 - Management Performance Review Delegated Committee is Councillor Watson.
7. A quorum for each of the three Committees is a whole number that is an absolute majority, which is the number of members that is greater than half the total number of members of the Delegated Committees.
8. All members of the Delegated Committees have voting rights on the respective Delegated Committees.
9. There be delegated to the members of the Delegated Committees the powers, duties and functions set out in the Instruments of Delegation (**the Instruments**) as at **Attachment 2** as annexed to the minutes.
10. The Instruments:
 - a) come into force immediately the common seal of Council is affixed to the Instrument; and
 - b) remain in force until Council determines to vary or revoke it.
11. The powers, duties and functions conferred on the members of the Delegated Committees by the Instruments must be exercised in accordance with any guidelines or policies Council may from time to time adopt.
12. The Instruments be sealed.

Responsible director: Phillip Storer
Chief Executive Officer

1. Purpose

The purpose of this report is for Council to consider establishing the Services Delegated Committee, the Urban Planning Delegated Committee and the Management Performance Review Delegated Committee under the provisions of the *Local Government Act 2020* (Act) and delegating specific Council functions, duties and powers to these committees by making an Instrument of Delegation for each. The existing Instruments of Delegation are required to be remade as a result of the proclamation of the the Act. This report also recommends the chairperson and membership of each of these Committees as required by the Act.

The revised Instruments (with changes tracked) are at **Attachment 1** and a clean copy is at **Attachment 2**.

2. Policy implications and relevance to community plan and council plan

The revised Instruments relate to Priority Theme 7 in particular strategy 7.2: *“Ensure transparent decision making through open governance processes”*.

Further, the establishing the committees under the new Act and making the Instruments of Delegation are consistent with Strategic Objective 7: *“Ensure that ethical, financial and socially responsible decision making reflects community needs and is based on principles of accountability, transparency, responsiveness and consultation”*.

3. Background

Council has an established tradition of having the following three committees as part of the decision making processes of Council:

- Services Committee which meets to consider and discuss reports on issues such as traffic management, road closures, parking, family and children’s services and youth services.
- Urban Planning Committee which is the forum at which Council makes decisions in regard to issues relating to the *Planning and Environment Act 1987* and the *Building Act 1990*.
- Performance Management Review Committee which deals with all matters related to the management of the Chief Executive Officer’s contract of employment.

Instruments of Delegation represent the formal delegation of powers by Council. Delegations enable the business of Council to be carried out effectively, in line with Council approved policies. Section 11 of the Act provides that Council may, by Instrument of Delegation, delegate any power, duty or function of Council under the Act or any other Act, other than certain specified powers.

Council subscribes to the Maddocks Authorisations and Delegations Service. This service provides advice regarding legislative amendments and template instruments which are then tailored to organisational requirements.

The current Instruments of Delegation for the Committees were adopted by Council on 27 February 2017 under the provisions of the *Local Government Act 1989*.

Section 11 of the Act requires Council to adopt new instruments of delegation by 1 September 2020. In accordance with sub section 11(7) of the Act the next review of these delegations will be required within twelve (12) months after the general election being held this year.

Consideration of the revised Instruments of Delegation in regard to the Committees of Council, as set out in this report, will achieve compliance with the obligations under the Act.

4. Outline of key issues/options

The amendments affecting the Committees as a result of the Act are:

- while the *Local Government Act 1989* referred to 'special committees' under section 86, the Act refers to 'delegated committees' established under section 63.
- as a result of the legislative change a new Council resolution and Instrument of Delegation for each delegated committee is required.
- the amended Instruments of Delegation are made pursuant to section 11(1) of the Act including a new condition imposed on Delegated Committees under section 11(5) that a delegation which includes the power to enter into a contract or make any expenditure must specify a maximum monetary limit that cannot be exceeded.

It is proposed the:

- Services Delegated Committee and the Urban Planning Delegated Committee expenditure is limited to \$20,000,000 (excluding GST); and
- Management Performance Review Delegated Committee expenditure is limited to \$50,000 (excluding GST).

Section 63 of the Act requires a delegated committee established by Council must include at least two councillors and may include any other persons appointed to the delegated committee by Council who are entitled to vote.

Under the Act the delegated committees must be chaired by a councillor appointed by the Council or the Mayor. It is proposed that Councillor Thompson and Councillor Ross continue to chair the Urban Planning Delegated Committee and the Services Delegated Committee respectively for the remainder of the current term of Council. This report recommends that all councillors are members of the Services Delegated Committee and the Urban Planning Delegated Committee.

In regard to the Management Performance Review Delegated Committee it is proposed that Councillor Addis, Councillor Sinfield, Councillor Watson and Councillor Wegman continue their appointment as members of this committee until the end of the current term of Council and Councillor Watson be appointed to the position of Chair for this committee.

If any of the three appointed delegated committee chairpersons are not present at the meetings of these committees the Act provides that a councillor who is present at the meeting is to be appointed chair for that meeting by members of the delegated committee who are present at the meeting.

Delegated committee meetings solely comprising of councillors, are required to be conducted in the same manner as the council meetings. This includes that a delegated committee may determine a meeting is to be closed to the public for specified reasons under section 66(2) of the Act, which includes:

- to consider confidential information; or
- security reasons; or
- to enable the meeting to proceed in an orderly manner.

A delegated committee can only close a meeting to the public for security reasons or for the meeting to proceed in an orderly manner, if arrangements have been made by the delegated committee to enable the proceedings of the meeting to be viewed by members of the public as the meeting is being held.

If the meeting is closed to the public to consider confidential information, the delegated committee must record in the minutes of the meeting the ground or grounds for determining to close the meeting to the public by reference to the grounds specified in the definition of confidential information in section 3(1) of the Act, an explanation why the specified grounds applied, and make the minutes available for public inspection.

In regard to the Instrument of Delegation for the Urban Planning Delegated Committee it is noted that under the *Planning and Environment Act 1987* the Committee is subject to the provisions of section 188 of that Act. Section 188 provides a range of matters that cannot be delegated and therefore must be considered at a Council meeting rather than a meeting of the Urban Planning Delegated Committee. The conditions and limitations are specified in the Instrument of Delegation to the Urban Planning Delegated Committee.

5. Consultation/communication

Council subscribes to the Maddocks Authorisations and Delegations Service, which provides advice regarding legislative amendments and template instruments.

Consultation has occurred with the Chief Executive Officer during the preparation of the revised Instrument.

6. Financial and resource implications

Overall, the costs to prepare and adopt the revised Instrument are minimal and will be met within the current Governance departmental budget.

7. Governance issues

The delegation of Council powers does not impact upon any of the protected rights or freedoms in the Victorian Human Rights Charter.

The officers responsible for this report have no direct or indirect interests requiring disclosure.

8. Social and environmental issues

Remaking Council's delegations to the Committees ensures Council continues to comply with its obligations under the Act, by facilitating and enabling the business of Council to be carried out efficiently and in line with Council approved policies.

Manager: David Thompson, Governance

Report officer: Celia Robinson, Coordinator Governance



Instrument of Delegation
to the
Services Special-Delegated Committee

Boroondara City Council delegates to ~~the each person who is from time to time appointed as a member of the special Delegated eCommittee~~ established by resolution of Council passed on ~~20 24 August December 1999 2020~~ and known as the "**Services Special-Delegated Committee**" (the Committee), the powers and functions set out in the Schedule, and declares that:

- 1. ~~_____~~ this Instrument of Delegation is authorised by a resolution of Council passed on ~~27 24 August February 2017 2020~~;
- 1.2. ~~_____~~ a delegate can only exercise the delegations contained in this Instrument of Delegation while acting as a member of the Committee at a meeting of the Committee;
- 2.3. ~~_____~~ the delegation:
 - 2.13.1 ~~_____~~ comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;
 - 2.23.2 ~~_____~~ remains in force until Council resolves to vary or revoke it; and
 - 2.33.3 ~~_____~~ is to be exercised in accordance with the exceptions, conditions and limitations set out in the Schedule and with regard to the guidelines or policies which Council from time to time adopts.
- 3.4. ~~_____~~ all members of the Delegated Committee will have voting rights on the Delegated Committee.

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:

(Mayor)

(Chief Executive Officer)

(Date)



SCHEDULE

Powers and functions

To exercise Council's functions and powers, perform Council's duties, determine any issue and take any action arising out of or connected with any duty imposed, or function or power conferred on Council, by or under any Act other than the *Planning and Environment Act 1987* and the *Building Act 1993*.

1. to enter into contracts, and to incur expenditure to a maximum monetary limit of ~~xx~~\$20,000,000 (excluding GST).
2. to do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers.

~~, and do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers.~~

Exceptions, conditions and limitations

The members of the Delegated Committee ~~is~~ are not authorised by this Instrument to:

3. ~~enter into contracts, or incur expenditure, for an amount which exceeds \$20,000,000 (excluding GST).~~
4. ~~exercise the powers which, by force of section 86-11(2) of the Local Government Act 2020, cannot be delegated, namely:~~
 4. ~~the power of delegation;~~
 5. ~~the power to declare a rate or charge;~~
 6. ~~the power to borrow money;~~
 7. ~~the power to enter into contracts for an amount exceeding an amount previously determined by the Council;~~
 8. ~~the power to incur any expenditure exceeding an amount previously determined by the Council; and~~
 9. ~~any other prescribed power which cannot lawfully be delegated.~~
10. ~~adopt the Council Plan, Strategic Resource Plan, Budget or Revised Budget, Annual Report, Annual Financial Statements, Standard Statements, Performance Statement, or Audit Report under Part 6 of the Local Government Act 1989;~~
11. ~~make an application to a Councillor Conduct Panel;~~
12. ~~appoint or reappoint a Chief Executive Officer.~~



**Instrument of Delegation
to the
Urban Planning Special-Delegated Committee**

Boroondara City Council (**Council**) delegates to ~~the~~ each person who is from time to time appointed as a member of the Delegated eCommittee established by resolution of Council passed on ~~20-24 August December 1999-2020~~ and known as the "**Urban Planning Special-Delegated Committee**" (**the Committee**), the powers, discretions and authorities set out in the Schedule, and declares that:

- 1. this Instrument of Delegation is authorised by a resolution of Council passed on 27-24 August February 2017-2020;
- 1.2. a delegate can only exercise the delegations contained in this Instrument of Delegation while acting as a member of the Committee at a meeting of the Committee;
- 2.3. the delegation:
 - 2.13.1 comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;
 - 2.23.2 remains in force until Council resolves to vary or revoke it; and
 - 2.33.3 is to be exercised in accordance with the exceptions, conditions and limitations set out in the Schedule and with regard to the guidelines or policies which Council from time to time adopts.
- 3.4. all members of the Delegated Committee have voting rights on the Delegated Committee.

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:

(Mayor)

(Chief Executive Officer)

(Date)

SCHEDULE

Powers and functions

To exercise Council's powers, discretions and authorities to perform Council's functions under the *Planning and Environment Act 1987* and the *Building Act 1993* having regard to relevant policies and guidelines of the Council

1. to enter into contracts and to incur expenditure to a maximum monetary limit of \$20,000,000 (excluding GST).
- ~~1.2. and~~ to do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers.

Exceptions, conditions and limitations

The members of the Delegated Committee ~~is~~are not authorised by this Instrument to:

3. enter into contracts, or incur expenditure, for an amount which exceeds \$20,000,000 (excluding GST).
4. exercise the powers which, under s 11(2) of the *Local Government Act 2020* or s 188 of the *Planning and Environment Act 1987*, cannot be delegated to the Committee.
~~exercise the powers which, by force of section 86 of the *Local Government Act 1989*, cannot be delegated,~~
namely:
 - ~~3.1 the power of delegation;~~
 - ~~3.2 the power to declare a rate or charge;~~
 - ~~3.3 the power to borrow money;~~
 - ~~3.4 the power to enter into contracts for an amount exceeding an amount previously determined by the Council;~~
 - ~~3.5 the power to incur any expenditure exceeding an amount previously determined by the Council; and~~
 - ~~3.6 any other prescribed power which cannot lawfully be delegated.~~
4. ~~exercise the powers which, by force of section 188 of the *Planning and Environment Act 1987* cannot be delegated, namely:~~
 - ~~4.1 the power of delegation;~~
 - ~~4.2 the powers of a planning authority to abandon or adopt amendments contained in sections 28 and 29;~~
 - ~~4.3 the power of a planning authority or responsible authority to appoint a committee to hear submissions under section 191;~~
 - ~~4.4 the powers of a responsible authority to apply for an injunction under section 125;~~

- ~~4.5 — the powers of a responsible authority to purchase, hold, lease and dispose of land by public auction, private treaty or otherwise under section 171(2)(b);~~
- ~~4.6 — the powers of a responsible authority to exchange land for other land and make any financial adjustment required as a result under section 171(2)(c);~~
- ~~4.7 — the powers of a responsible authority to consolidate, subdivide, re-subdivide and develop land for any purpose consistent with the planning scheme for which it is the responsible authority under section 171(2)(d);~~
- ~~4.8 — the power of a responsible authority to authorise any officer to carry out a duty or function or to exercise a power.~~



Instrument of Delegation
to the
Management Performance Review
Special-Delegated Committee

Boroondara City Council delegates to ~~the special committee~~ each person who is from time to time appointed as a member of the Delegated Committee established by resolution of Council passed on ~~11 May 2009~~ 24 August 2020 and known as the "Management Performance Review Special Committee" (the Committee), the powers and functions set out in the Schedule, and declares that:

1. this Instrument of Delegation is authorised by a resolution of Council passed on ~~27 February 2017~~ 24 August 2020;

1.2. a delegate can only exercise the delegations contained in this Instrument of Delegation while acting as a member of the Committee at a meeting of the Committee;

2.3. the delegation:

2.13.1 comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;

2.23.2 remains in force until Council resolves to vary or revoke it; and

3.3 is to be exercised in accordance with the guidelines or policies which Council from time to time adopts.

4. all members of the Delegated Committee will have voting rights on the Delegated Committee.

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:

(Mayor)

(Chief Executive Officer)

(Date)



SCHEDULE

Powers and functions

The Management Performance Review ~~Special-Delegated~~ Committee has the following powers and functions:

1. To exercise Council's powers and functions and to perform Council's duties in relation to the management of the Chief Executive Officer's Contract of Employment and to do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers, including but not limited to:
 - a. determining arrangements for conduct of the Chief Executive Officer's performance review;
 - b. undertaking the annual review Chief Executive Officer's performance; and
 - c. undertaking the annual review Chief Executive Officer's total remuneration package.
2. To act as an advisory body for the Chief Executive Officer regarding organisational performance, management and good governance.
3. To enter into contracts, and to incur expenditure to a maximum monetary limit of \$50,000 (excluding GST);
4. To do all things necessary or convenient to be done for or in connection with the performance those functions, duties and powers.

Exceptions, conditions and limitations

The Committee is not authorised by this Instrument to:

1. ~~exercise the powers which, by force of section 86 of the Act, cannot be delegated, namely:~~
 - 1.1 ~~the power of delegation;~~
 - 1.2 ~~the power to declare a rate or charge;~~
 - 1.3 ~~the power to borrow money;~~
 - 1.4 ~~the power to enter into contracts for an amount exceeding an amount previously determined by the Council;~~
 - 1.5 ~~the power to incur any expenditure exceeding an amount previously determined by the Council;~~

- ~~1.6 any other prescribed power which cannot lawfully be delegated.~~
5. appoint, reappoint or dismiss a Chief Executive Officer.
6. enter into contracts, or incur expenditure, for an amount which exceeds \$50,000 (excluding GST);
7. exercise the powers which, by force section 11(2) of the Local Government Act 2020, cannot be delegated.



***Instrument of Delegation
to the
Services Delegated Committee***

Boroondara City Council delegates to each person who is from time to time appointed as a member of the Delegated Committee established by resolution of Council passed on 24 August 2020 and known as the "**Services Delegated Committee**" (**the Committee**), the powers and functions set out in the Schedule, and declares that:

1. this Instrument of Delegation is authorised by a resolution of Council passed on 24 August 2020;
2. a delegate can only exercise the delegations contained in this Instrument of Delegation while acting as a member of the Committee at a meeting of the Committee;
3. the delegation:
 - 3.1 comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;
 - 3.2 remains in force until Council resolves to vary or revoke it; and
 - 3.3 is to be exercised in accordance with the exceptions, conditions and limitations set out in the Schedule and with regard to the guidelines or policies which Council from time to time adopts.
4. all members of the Delegated Committee will have voting rights on the Delegated Committee.

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:

(Mayor)

(Chief Executive Officer)

(Date)



SCHEDULE

Powers and functions

To exercise Council's functions and powers, perform Council's duties, determine any issue and take any action arising out of or connected with any duty imposed, or function or power conferred on Council, by or under any Act other than the *Planning and Environment Act 1987* and the *Building Act 1993*.

1. to enter into contracts, and to incur expenditure to a maximum monetary limit of \$20,000,000 (excluding GST).
2. to do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers.

Exceptions, conditions and limitations

The members of the Delegated Committee are not authorised by this Instrument to:

3. enter into contracts, or incur expenditure, for an amount which exceeds \$20,000,000 (excluding GST).
4. exercise the powers which, by force of section 11(2) of the Local Government Act 2020, cannot be delegated.



***Instrument of Delegation
to the
Urban Planning Delegated Committee***

Boroondara City Council (**Council**) delegates to each person who is from time to time appointed as a member of the Delegated Committee established by resolution of Council passed on 24 August 2020 and known as the "**Urban Planning Delegated Committee**" (**the Committee**), the powers, discretions and authorities set out in the Schedule, and declares that:

1. this Instrument of Delegation is authorised by a resolution of Council passed on 24 August 2020;
2. a delegate can only exercise the delegations contained in this Instrument of Delegation while acting as a member of the Committee at a meeting of the Committee;
3. the delegation:
 - 3.1 comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;
 - 3.2 remains in force until Council resolves to vary or revoke it; and
 - 3.3 is to be exercised in accordance with the exceptions, conditions and limitations set out in the Schedule and with regard to the guidelines or policies which Council from time to time adopts.
4. all members of the Delegated Committee have voting rights on the Delegated Committee.

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:

(Mayor)

(Chief Executive Officer)

(Date)

SCHEDULE

Powers and functions

To exercise Council's powers, discretions and authorities to perform Council's functions under the *Planning and Environment Act 1987* and the *Building Act 1993* having regard to relevant policies and guidelines of the Council

1. to enter into contracts and to incur expenditure to a maximum monetary limit of \$20,000,000 (excluding GST).
2. to do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers.

Exceptions, conditions and limitations

The members of the Delegated Committee are not authorised by this Instrument to:

3. enter into contracts, or incur expenditure, for an amount which exceeds \$20,000,000 (excluding GST).
4. exercise the powers which, under s 11(2) of the *Local Government Act 2020* or s 188 of the *Planning and Environment Act 1987*, cannot be delegated to the Committee.



Instrument of Delegation
to the
Management Performance Review
Delegated Committee

Boroondara City Council delegates to each person who is from time to time appointed as a member of the Delegated Committee established by resolution of Council passed on 24 August 2020 and known as the "**Management Performance Review Delegated Committee**" (**the Committee**), the powers and functions set out in the Schedule, and declares that:

1. this Instrument of Delegation is authorised by a resolution of Council passed on 24 August 2020;
2. a delegate can only exercise the delegations contained in this Instrument of Delegation while acting as a member of the Committee at a meeting of the Committee;
3. the delegation:
 - 3.1 comes into force immediately the common seal of Council is affixed to this Instrument of Delegation;
 - 3.2 remains in force until Council resolves to vary or revoke it; and
 - 3.3 is to be exercised in accordance with the guidelines or policies which Council from time to time adopts.
4. all members of the Delegated Committee will have voting rights on the Delegated Committee.

The Common Seal of the Boroondara City Council was hereunto affixed in the presence of:

(Mayor)

(Chief Executive Officer)

(Date)



SCHEDULE

Powers and functions

The Management Performance Review Delegated Committee has the following powers and functions:

1. To exercise Council's powers and functions and to perform Council's duties in relation to the management of the Chief Executive Officer's Contract of Employment and to do all things necessary or convenient to be done for or in connection with the performance of those functions, duties and powers, including but not limited to:
 - a. determining arrangements for conduct of the Chief Executive Officer's performance review;
 - b. undertaking the annual review Chief Executive Officer's performance; and
 - c. undertaking the annual review Chief Executive Officer's total remuneration package.
2. To act as an advisory body for the Chief Executive Officer regarding organisational performance, management and good governance.
3. To enter into contracts, and to incur expenditure to a maximum monetary limit of \$50,000 (excluding GST);
4. To do all things necessary or convenient to be done for or in connection with the performance those functions, duties and powers.

Exceptions, conditions and limitations

The Committee is not authorised by this Instrument to:

1. appoint, reappoint or dismiss a Chief Executive Officer.
2. enter into contracts, or incur expenditure, for an amount which exceeds \$50,000 (excluding GST);
3. exercise the powers which, by force section 11(2) of the Local Government Act 2020, cannot be delegated.